2023:DHC:2138

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 24th March, 2023

\+ **W.P.(C) 3792/2023 & CM APPL. 14800-01/2023**

VIJENDER GUPTA ..... Petitioner

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Pavan Narang, Mr. Neeraj, Mr. Satya Ranjan Swain, Mr. Amit Tiwari, Mr. Ripu Daman Bhardwaj, Ms. Jyoti Taneja, Mr. Shoumendu Mukherjee, Mr. Himanshu Sethi, Mr. Shrey Sherawat, Mr. Aman Jha, Mr. Kautilya Birat, Sanket Gupta, Rajesh Mishra, Aishwarya Chhabra, Rudra Paliwal, Advocates.

versus

LEGISLATIVE ASSEMBLY OF THE NATIONAL CAPITAL TERRITORY OF DELHI THROUGH SECRETARY & ANR. ..... Respondents

Through: Mr. Sameer Vashisht, ASC, Civil GNCTD. Mr. Parth Vibhu, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Mr. Vijender Gupta, who is a sitting MLA of the Delhi Legislative Assembly *(hereinafter 'DLA')*, challenging the suspension order which was imposed on him during the proceedings of the DLA on 21st March, 2023.

3. Since there is no specific order which has been passed by the Hon'ble Speaker and the suspension is to be gleaned from the *"summary of proceedings"* which took place in the DLA on that day, it is deemed appropriate to extract the said summary herein below:-

"I. 11.07 AM The Chair informed the House that for the first time in the history of the House, Annual Budget (2023-24) would not be presented as per schedule: The Chair termed it as an unfortunate, unconstitutional and extraordinary incident and requested Shri Kailash Gahlot, Hon'ble Minister of Finance to make a statement in this regard.

2. 11.08 AM Shri Vijender Gupta, Hon'ble Members started arguing with the Chair and demanded that Notice of Privilege given by him against Shri Kailash Gahlot and Shri Gopal Rai, Hon'ble Ministers be taken up.

The Chair requested the Hon'ble Member to allow Shri Kailash Gahlot, Hon'ble Minister to make a statement.

However, Shri Vijender Gupta, Hon'ble Member continued to argue with the Chair and disrupted the proceedings of the House.

On the directions of the Chair, the Marshalls escorted Shri Vijender Gupta, Hon'ble Member out of the House.

***11.16 PM** : Shri Ramvir Singh Bidhuri, Hon'ble Leader of Opposition and Other Members of Opposition walked out in the protest.*

*3. 11: 16 AM **Shri Kailash Gahlot, Hon'ble Minister of Finance** made a brief statement and apprised the House regarding the circumstances for not being able to present the Budget today i.e. scheduled date due to lack of approval from Ministry of Home Affairs (MHA).*

4. 11.23 AM Shri Sanjeev Jha, Hon'ble Member also expressed his concerns.

The Members of the Ruling Party entered the well of the House and started shouting slogans.

The Chair requested the Members to resume their seats.

However, the Members of Ruling Party continued to indulge in sloganeering.

*5. 11.24 AM **The Chair adjourned the House till***

12:00 Noon.

6. ***12.04 PM House reassembled.***

Hon'ble Speaker in-Chair.

7. 12.04 PM The Chair gave a Ruling on the Notice of Breach of Privilege against Shri Kailash Gahlot and Shri Gopal Rail, Hon'ble Ministers given by Sliri Vijender Gupta, Hon'ble Member and informed the House that it was received at 10:59 AM, whereas per Rules it should be submitted at least 03 (three) hours before the commencement of sitting on that day. He stated that the Notice mentioned leak of contents of Outcome Budget, already presented on 20/03/2023, and did not relate to the Annual Budget. He also stated that it was obvious that sole motive of Shri Vijender Gupta, Hon'ble Member was to disrupt the proceedings of the House and waste precious time of the House. The Chair also warned Shri Vijender Gupta, Hon'ble Member to be careful in future and not waste the time of the House by such frivolous Notice which was also against the Rules.

8. 12.11 PM ***Shri Mohinder Goyal, Hon'ble Member*** *made a brief statement condemning the irresponsible behaviour of Shri Vijender Gupta, Hon'ble Member for disrupting the proceedings of the House.*

9. 12.13 PM ***Shri Dilip Kumar Pandey, Hon'ble Chief Whip*** *also drew the attention of the Chair on the Notice of Privilege given by Shri Vijender Gupta, Hon'ble Member with a malafide intent and requested the Chair to refer the matter to Committee on Ethics.*

10. 12.14 PM The Members of Ruling Party again entered the well of the House and started shouting slogans and created rucks.

Uproar in the House ensured.

The Chair requested the members to resume their seats. However, the Members continued to indulge in sloganeering and disrupted the proceedings of the House.

11. 12.16 PM ***The Chair adjourned the House till***

> ***02:00 P.M.***
> *12. · 02.47PM* ***House reassembled.***
> ***Hon'ble Speaker in-Chair.***
> *13. 02.47PM Shri Vijender Gupta, Hon'ble Member again raised the issue of Notice of Privilege given by him.*
> *The Chair informed Hon'ble Member that he had given a Ruling in the matter. However, Hon'ble Member continued to argue with the Chairand entered the well of the House and continuously disrupted the proceedings of the House.*
> *14.* ***02.52PM Shri Sanjeev Jha, Hon'ble Member moved a Motion that Shri Vijender Gupta, Hon'ble Member be suspended for one year for repeatedly interrupting the proceedings and wasting the time of the House.***
> ***The Motion was put to vote and adopted by voice-vote. The Chair informed the House that Shri Vijender Gupta, Hon'ble Member has been suspended from the sittings of the House for one year i.e. till the next Budget Session.***
> *As the Hon'ble Member refused to leave the House voluntarily, he was escorted out of the House by the Marshalls on the directions of the Chair.*"

4. The said suspension is stated to have come into effect on 21st March, 2023 itself and has continued till date i.e., 24th March 2023. The submission of Mr. Jayant Mehta, ld. Sr. Counsel appearing for the Petitioner is that in terms of Rule 277 of the Rules of Procedure and Conduct of Business in the Legislative Assembly of the National Capital Territory of Delhi *(hereinafter 'Rules')* which govern the proceedings in the Legislative Assembly of NCT of Delhi, the suspension is in a graded manner.

5. On the basis of Rule 277 extracted above, it is his submission that in any case, on the first occasion, the suspension can only be for a period of

three sittings. On the second occasion, the suspension can be for seven sittings and on the subsequent occasions the MLA can be suspended for the remainder of the session. However, in the present case, the Petitioner has been suspended for a period of one year, till the next Budget session. He further submits that the entire debate arose due to a privilege motion which was moved by the Petitioner in respect of alleged selected publication of part of the budget which was yet to be presented, in the social media, by senior functionaries of the GNCTD.

6. Mr. Jayant Mehta, ld. Sr. Counsel relies upon the judgment of the Supreme Court in ***Ashish Shelar v. The Maharashtra Legislative Assembly AIR 2022 SC 721*** - Paras 63, 64,73 to argue that the graded suspension alone can be followed.

7. Mr. Sameer Vashisht, ld. Counsel for the Respondents, on the other hand, relies upon Section 37 of the Government of NCT of Delhi Act, 1991 read with section 18 of the said Act to argue that such suspensions are not to be enquired into by any Court. He further submits that in the present case, the suspension is by the House itself and not by the Hon'ble Speaker. Therefore, the House is fully empowered to issue punishment of a higher nature than what is prescribed under Rule 277. He relies upon Rule 77 of the Rules. The said rule is extracted as under:

> *"77. Punishment.*
>
> *(1) The House on its own or on the recommendation of the Committee of Privileges may inflict the following punishments:*
>
> *(a) Admonition;*
> *(b) reprimand;*
> *(c) suspension of member;*
> *(d) fine;*

> *(e) expulsion of member;*
>
> *(f) imprisonment the term whereof is at the pleasure of the House but cannot extend beyond prorogation or dissolution; and*
>
> *(g) any other punishment which the House may deem proper and subject to the provisions of Section 18.*
>
> *(2) The members suspended from the Service of the House shall stand debarred from entering into the precincts of the House and from taking part in the proceedings of the House and the Committees, but the Speaker may, on a request being made to that effect, allow a suspended member to enter into the precincts of the House for any particular purpose.*
>
> *(3) The House may, on a motion being made, order that any punishment of suspension or the unfinished part thereof may be rescinded.*"

8. Mr. Vashisht further submits that the Leader of Opposition has approached the Hon'ble Speaker who is still considering the matter and hence the matter may be adjourned to 28th March 2023. On a query as to till when the Budget session is to continue, the Court was informed that the Budget session as of now is only till 27th March 2023, subject to any extensions.

9. Heard. First, the request for adjourning the matter to 28th March 2023 would be a futile exercise as the Budget Session itself is coming to an end on Monday 27th March 2023. Thus, the matter would require consideration.

10. Rule 277 of the Rules reads:

> *"277.* ***Peace and Order in the house.***
>
> *(1) The Speaker shall preserve order and may direct any member whose conduct in his opinion is disorderly or is defiant to the Speaker to withdraw immediately from the House and the member so ordered to withdraw shall withdraw forthwith and*

shall absent himself during the remainder of the day's sitting.

(2) The Speaker may name a member in the following cases:

(a) if a member on being ordered by the Speaker under sub-rule (1) to withdraw does not obey the order, or

(b) if the Speaker considers the power conferred under sub-rule (1) to be inadequate, or

(c) if a member wilfully and persistently obstructs the proceedings of the House in a disorderly manner, or

(d) if action under this rule becomes necessary against him on successive occasions in the same session.

(3) (a) As soon as a member is named, ***the Leader of the House or the Minister for Parliamentary Affairs or in his absence any other member shall forthwith make a motion to the effect that the member so named be suspended from the service of the House and the question on such motion shall be put before the House without any amendment, debate or adjournment proceeding****.*

(b) On a member being so suspended, the period of suspension shall be for the ***first occasion for 3 sittings****, for the* ***second occasion for 7 sittings*** *and on* ***subsequent occasions unless otherwise decided by the House, for the remainder of the session****.*

Provided that any period of suspension shall in no case be longer than the remainder of the session.

(c) The member suspended by the House shall forthwith withdraw from the precincts of the House. ***But on his not doing so and on the attention of the House being drawn by the Speaker to the fact that recourse to force has become necessary****, the suspended member* ***shall stand suspended for the remainder of the session without any further action.***

> *(d) The member suspended from the service of the house shall stand debarred from entering the precincts of the House and from taking part in the proceedings of the House and the Committees.*
>
> *Provided that the Speaker may allow a suspended member to enter the precincts of the House for any particular purpose on a request being made to that effect.*
>
> *(4) The House may at any time, on a motion being made order that any punishment of suspension under sub-rule (3) aforesaid or the unfinished part thereof may be rescinded.*
>
> *(5) The Speaker shall have full authority to carry out his order or the decisions of the house and may employ, or authorise the employment of, necessary force, at any stage of the proceedings.*
>
> *(6) The Speaker may, in the case of grave disorder arising in the House, suspend a sitting for a time to be determined by him."*

11. The Supreme Court had the occasion to consider a similar situation in ***Ashish Shelar (supra)***, In the said case relating to the Maharashtra Legislative Assembly, the suspension was also for a period of 1 year. In the said decision the Supreme Court while considering similar Rules governing the Maharashtra Assembly held as under:

> *"45.* ***A priori, if the resolution passed by the House was to provide for suspension beyond the period prescribed under the stated Rule, it would be substantively illegal, irrational and unconstitutional.*** *In that, the graded (rational and objective standard) approach predicated in Rule 53 is the benchmark to be observed by the Speaker to enable him to ensure smooth working of the House, without any obstruction or impediment and for keeping the recalcitrant member away from the House for a period maximum up to the remainder of the entire Session.*
>
> *46.* ***Inflicting suspension for a period "beyond the***

period necessary" than to ensure smooth working/functioning of the House during the Session "by itself"; *and also, as per the underlying objective standard specified in Rule 53, indubitably,* ***suffer from the vice of being grossly irrational measure adopted against the erring member and also substantively illegal and unconstitutional.***

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48. ***Be it noted that suspension beyond the remainder period of the ongoing Session would not only be grossly irrational measure, but also violative of basic democratic values owing to unessential deprivation of the member concerned and more importantly, the constituency would remain unrepresented in the Assembly.*** *It would also impact the democratic setup as a whole by permitting the thin majority Government (coalition Government) of the day to manipulate the numbers of the Opposition Party in the House in an undemocratic manner. Not only that, the Opposition will not be able to effectively participate in the discussion/debate in the House owing to the constant fear of its members being suspended for longer period. There would be no purposeful or meaningful debates but one in terrorem and as per the whims of the majority. That would not be healthy for the democracy as a whole.*

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51. ***As aforementioned, it is not a case of procedural irregularity as such. Whereas, the decision taken by the House in this case, is one of substantive illegality in directing suspension beyond the period of remainder of the Session in which the motion was presented.*** *We say so because, the period of suspension in excess of the period essential to do so much less in a graded manner including on principle underlying Rule 53, would be antithesis to rational or objective standard approach for ensuring orderly functioning of the House during the ongoing Session.*

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> *56.* ***Suffice it to observe that one-year suspension is worse than "expulsion", "disqualification" or "resignation"--insofar as the right of the constituency to be represented before the House/Assembly is concerned.*** *In that, long suspension is bound to affect the rights harsher than expulsion wherein a mid-term election is held within the specified time in terms of Section 151A of the 1951 Act, not later than six months.* ***Thus, the impugned resolution is unreasonable, irrational, and arbitrary and liable to be set aside."***

12. A perusal of the Rules as also the judgment of the Supreme Court in ***Ashish Shelar (supra)***, clearly shows that in Rule 277, the suspension is graded. Under Rule 277(1), the Hon'ble Speaker can direct any MLA to be suspended for the remainder of the day's sitting if the conduct is ***disorderly***. Rule 277(3)(b) clearly requires that, on the first occasion, the suspension can only be for three sittings. On the second occasion the suspension can be for seven sittings and thereafter for the remainder of the session, unless otherwise directed by the House. In terms of judgment of the Supreme Court in ***Ashish Shelar (supra)***, the suspension beyond the remainder of the session would be contrary to law.

13. The Budget Session of the Delhi Legislative Assembly is currently ongoing and the Petitioner has already remained suspended for four days i.e. 21st March, 2023; 22nd March, 2023; 23rd March, 2023 and 24th March, 2023 in view of the impugned suspension order.

14. A perusal of the summary of proceedings extracted above shows that there was disturbance caused during the sitting of the House both by the Petitioner, as also by ruling party members. There is no gainsaying that the Members of the Legislative Assembly or any other elected house have to

maintain dignity of the house in order to play a positive role owing to the mandate of the people.

15. The record of the proceedings shows that this was the first suspension which was meted out to the Petitioner. Accordingly, in terms of Rule 227(3)(b), the suspension could have only to be for a period of three days which the Petitioner has already served in effect.

16. In view of the above discussion, the suspension period, being of one year deserves to be set aside. It is accordingly directed that the Petitioner would be permitted to attend the DLA from Monday i.e., 27th March, 2023 till the remainder of the current Session. The writ petition is allowed in the above terms.

17. The questions of law raised in respect of Rule 77 and 277, by Mr. Vashisht, ld. Counsel, are left open to be decided in an appropriate case.

18. Needless to add that the Petitioner shall also maintain the dignity of the House. This Court has not examined the merits of the suspension.

19. With these above observations, the present petition along with all pending applications, if any, is disposed of.

20. Copy of this order be given *dasti* under signature of the Court Master.

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

MARCH 24, 2023/*MR/SK/dn*